

Reply to office action of 10/01/2003  
Appl. No. 09/914,551

### **REMARKS**

Reconsideration of the application is requested in view of the above amendments and the following remarks. Claims 1-20 have been amended, claim 21 has been cancelled, and claims 22-39 have been added. The specification was objected to because of omitted subject headings and priority data. Claims 15-20 were objected to for failing to further limit the subject matter of a previous claim. Claim 21 was rejected under 35 U.S.C. § 101 for reciting an improper definition of a process. Claims 1-21 were rejected under 35 U.S.C. § 112 for indefiniteness. Finally, claims 1-21 were rejected under 35 U.S.C. § 103, as obvious over WO-A-97/33971 (hereinafter "the '971 reference"). Applicant respectfully traverses all these objections and rejections, which are discussed in further detail below.

#### **Amendments to the Specification**

The specification was objected to because it failed to recite information regarding its priority date and also omitted certain subject headings. Information about the application's claim of priority has been added in the amendment. Appropriate subject headings have also been added. Accordingly, applicant respectfully contends these objections have been overcome.

#### **Claim Objections Under 37 C.F.R. § 1.75(c)**

Claims 15-20 were objected to under 37 C.F.R. § 1.75(c) for failing to further limit the previous claims. Specifically, the Examiner found it unclear how claim 15 further limited claim 1. Applicant respectfully traverses this objection. Claim 15 does not depend from claim 1. As previously written, claim 15 referred to claim 1 without actually depending therefrom. Claim 15 has been amended in order to clarify its independence. Accordingly, a rejection under 37 C.F.R. § 1.75(c) cannot be maintained.

#### **Claim Rejection Under 35 U.S.C. § 101**

Claim 21 was rejected under 35 U.S.C. § 101. Claim 21 has been cancelled, however, rendering this rejection moot.

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### **Claim Rejection Under 35 U.S.C. § 112**

Claims 1-21 were found indefinite under 35 U.S.C. § 112, ¶ 2, for failing to particularly point out and distinctly claim the subject matter which the applicant regards as his invention. The Applicant respectfully traverses this rejection. Claims 1-21 have been amended to provide an antecedent basis where needed. In addition, all claims that included alternative limitations have been amended and should now satisfy § 112. Specifically, all claims that involved the phrases "preferably" or "in particular" have been amended by adding new dependant claims that incorporate these alternative limitations. Finally, claim language that became confusing following translation has been amended to read more clearly. For these reasons, the Applicant respectfully contends that the claims language clearly and definitively indicates the subject matter encompassed by the claim language, and the § 112 rejection has been overcome.

### **Claim Rejection Under 35 U.S.C. § 103**

Claims 1-21 were rejected under 35 U.S.C. § 103 as obvious over the '971 reference. The Examiner argued that the '971 disclosed every feature of the current invention, except it teaches the process for use in a different field. The Examiner concluded that it would have been obvious to use the teachings of the brewing field to address the problem the claimed invention aims to solve. Applicant respectfully traverses this rejection.

The current invention is directed to the control of a content of microorganisms during the processing of sugar in the sugar-manufacturing industry. The '971 reference, however, applies to the brewing industry, and teaches the preparation of a hops acid solution for use in brewing beer. These two fields involve different problems and seek different goals. Thus, the '971 does not involve an analogous art.

Since the '971 is not in the same field as the current reference, the '971 reference constitutes applicable prior art only if its teachings are reasonably pertinent to the solution of the particular problem the current invention seeks to solve. *In re Oetiker*, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). In the brewing industry, hops acid is used to control the bitterness of beer. Thus, hops acid serves as a taste-enhancing ingredient (p. 2, ll. 3-9), and also serves aesthetic purposes. (p. 3, l. 34 - p. 4, l. 11). The '971 reference also teaches that hops

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acid provides bacteriostatic protection for the yeast in the final product. (p. 4, ll. 12-20). Thus, hops acid is used to avoid the formation of microorganisms when beer is exposed to light, i.e. to provide a light-stable beer. (p. 4., l. 12). The teachings of '971 sought to overcome problems involving the solubility of hops acid, and the resulting inability to use a variety of hops acids in the brewing process.

The current invention, however, seeks to enhance the effectiveness of hops acid when used to control the content of microorganisms in a sugar-containing aqueous process medium. (p. 2, l. 1). In other words, the current invention seeks to obtain the same action but through a reduced dosage, or increased action using the same dosage. Thus, in addition to the fact that the '971 reference does not fall within an analogous art, it also teaches the solution of an entirely different problem. For these reasons and more, it fails to render the claimed invention obvious.

Moreover, the '971 reference teaches the bacteriostatic action of the hops acid with respect to the final product, beer. The '971 reference only teaches that the bacteriostatic action of the hops acid provides a light-stable beer. Unlike in the brewing process, however, the hops acid in the current invention serves to combat microorganisms during the production process of sugar as well.

Furthermore, claim 1 discloses that the hops acid passes from a dissociated to a non-dissociated state. The '971 reference completely fails to teach this step. Accordingly, the '971 reference fails to render the claimed invention obvious.

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In view of the above, Applicant respectfully requests reconsideration of the application in the form of a Notice of Allowance.



Date: \_\_\_\_\_

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Respectfully submitted,

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